

# SMITH CASE FOR GEAR

## Humphreys Says He Will Not Try It.

(From Wednesday's daily.)

THE third day set for the arraignment of Walter G. Smith fell yesterday morning at 10 o'clock. The court room was well filled with people who expected to hear something drop, and with lawyers who are deeply interested in the pending case. Mr. Smith was accompanied by his attorneys, Messrs. Ballou, Kinney, Andrews and Hankey. Judge Hartwell refusing to practice before Judge Humphreys unless his client's rights were again imperiled. Among the lawyers present Tom Fitch occupied a prominent seat. Outside in the hall Bailiff Lewis rubbed in an atmosphere of gloom. Turk was absent. The proceedings began with the rising of Mr. Fitch, addressing the court and court by the way, that looked as if it had been sitting up nights trying to figure out what had struck it.

Mr. Fitch. May it please your Honor, I ask the privilege of saying a few words in what, were it before a legislative body, I should call a question of privilege, and I think it may be properly so considered in court.

I find in the Advertiser of yesterday morning—I have not been able to be here before and now bring the attention of the court to it—an affidavit made by Arthur W. Pearson, in which among other things he states that said Oscar Lewis—referring thereby to the bailiff of this court—accompanied by Turk, his former partner, called on me at my office. Lewis said to me that he had some information to give me on the dead end, and said that Tom Fitch had told him that the official—meaning Secretary Cooper and ex-Superintendent of Public Works McCandless, whose case was then pending before Judge Humphreys upon the charge of contempt—would be discharged by Humphreys next Tuesday on the grounds of hearsay evidence, but that said Judge would burn them up in his decision.

I do not know, of course, what Mr. Lewis may have said to Mr. Smith or how Mr. Smith may have interpreted what Mr. Lewis said to him, but I do know that neither—

The Court. Mr. Smith do you mean?

Does that affidavit say Mr. Smith?

Mr. Fitch. Mr. Pearson of the Advertiser. I had mixed Mr. Smith up in my mind with the Advertiser.

I do know that neither to Mr. Lewis, the bailiff of this court, nor to any other person at any time or place anywhere have I undertaken to state what the decision of this Court would be upon any question. It would be impossible that I should do such a thing. Of course, I do not know; I think likely I may have said this; it is altogether possible that I did say this; in fact, I remember that Mr. Lewis came to me while I was seated at this table; I don't know how long after the argument, whether it was the same day or the next day, and asked me how the case would go, and I made answer to him that I did not see how your Honor could decide any other way; the remark was made without thought, with no idea that any attempt would be made to make merchandise of it; that I did not see how your Honor could decide it any other way than to discharge the rule on the ground of the testimony being hearsay. In fact, I had said that elsewhere openly. In fact, I believe I said substantially that in the argument that I made here.

I was called upon by the Court to act as amicus curiae in the case, and I have never believed that the duties of that position called upon the person who filled it to do anything else than to advise the Court without reference to what he might suppose to be the views of the Court; but to advise the Court as to what he believes to be the law in the case. I said then, and I have said since, I have no hesitation in saying now, that I do not see how your Honor could decide the case in any other way than to discharge the rule on the ground that the parties had testified that the evidence brought to their knowledge was hearsay. I endeavored to discharge the duties of amicus curiae with fairness and certainly without malice, for I possess none and have none now in the case, nor did I say, nor could I have said since, that it was the intention of your Honor to burn them up alive. In fact, the two statements are inconsistent. If the Court discharges them on the ground that no law has been violated, I could not presume that the Court would take it upon itself to make any remarks that were other than appropriate to the occasion.

The matter may seem of small consequence, but I do not like to be placed upon anybody's statement or innuendo before the community or before the Court in the light of expressing opinions even—certainly in the light of stating from the basis of any knowledge what the decision of the Court would be. I have never, as your Honor knows, had any conversation with you directly or indirectly on this subject, or said anything to you about it except what I have said in open court. It would be improper for me to do that as it would be for your Honor to listen to it, if you would listen to it, as I know you would not.

There are other matters in this affidavit which are perhaps more the business of the Attorney General than they are of mine, relating to an attempt to the bailiff to sell what he did not have and could not get if he did that to Mr. Smith—a verdict of acquittal from a jury to be picked for that purpose—I thank your Honor for having given me your attention on this matter to set myself right, as I have stated.

The Court. The Court is very much obliged to Colonel Fitch for having called its attention to so much of the matter set forth in the alleged affidavit as reflects upon the Court and as reflects upon Colonel Fitch.

The Court never at any time had any conversation, as Colonel Fitch has stated, with him with reference to his duties as amicus curiae in the matter of J. A. McCandless and in the matter of J. P. Dole, except a conversation of the most formal character in which the Court indicated to this amicus curiae the points which it thought were involved

and the arguments which it thought like to be urged at the bar, so that he might properly prepare himself for presenting them in the Court. These points were not assigned upon by the Court, but they were assigned upon by the Court, and the Court, in its decision, followed them in their various ramifications. As before stated, the conversation was of the most informal character, not enduring for a period of time exceeding perhaps five minutes, and I think it was only one conversation with Mr. Fitch, one of the amicus curiae, and some conversation with Colonel Fitch, but it is now under the impression that it had only one conversation with each of these gentlemen. Possibly there were two conversations with Colonel Fitch, but those conversations were of the most formal character and were not at all private in their nature.

As to the other matters set forth in the affidavit and to which my attention has been unofficially called, I desire to say that it appears from the affidavit that the alleged offer of Bailiff Lewis to corrupt himself in the interests of one who stands indicted in this court, is alleged to have been made on May 23d. If that offer was made—if the offer was made to the bailiff of this court on May 23d to any reputable citizen in this community, it was the bounden duty of that citizen, bound by all the obligations and by all the ties of civil duty, to report that matter at once either to the Court or to the Grand Jury or to the Attorney General, in order that it might be taken in hand.

Instead of that, the affidavit was put in pickle, apparently, before the 27th day of May, when it was published among other attacks upon the Court.

Now, no matter what a man's character and position and standing may be in this community in the estimation of some of it, any considerable portion of it, or in the estimation of all of it, this Court, in the discharge of its duties, cannot act upon a copy of an affidavit customary to invoke the process of courts of justice by publications in the public prints. There is no affidavit before this Court; there is no complaint before this Court. The Court's attention has now been officially called, not so much to the alleged corruption of its bailiff, his willingness to corrupt himself and corrupt other officials of the court, as to certain matters of privilege in the affidavit which concerned Colonel Fitch alone, and which, of course, concerned the Court. The Court cannot issue any rule to show cause upon that document. It purports to be a copy—a published copy of an affidavit. A proceeding to call a man to account upon a copy of an affidavit in a matter involving his integrity and his honor, would be an unheard-of proceeding. As before stated, this Court is open and the Grand Jury is in session. If any citizen has any complaint to make against any official of this Court, that complaint will be received and will be promptly and fairly considered and acted upon. But the Court will not call upon any of its officers, whatever may be the opinion of this community of those officers of the Court will not call any of its officers to account; nor would it call any citizen in this community to account upon street rumors or upon published statements made against him in the press of the City.

We have not yet arrived at that condition of the administration of penal justice where we invoke the process of the courts and put men upon trial where their property, or their liberty, or their honor is involved, on the mere ipse dixit or accusation of some one published in a newspaper.

Now it would seem that if a proposition were made to any man who had in his breast one spark of honor or manhood or courage, to have him for a consideration corrupt an official of a court of justice, that that man would immediately report it to the Grand Jury, that he would report it to the Attorney General, that he would report it to the courts.

From the showing made in this case, as before stated, it appears that this offer was made on May 23d, and for some reason it was buried, put in pickle until May 27th, when it was published among other assaults upon the Court.

The Court does not feel that it is a matter that it can notice or which it should notice in the manner in which it is presented; the Court accordingly dismisses it from its consideration.

The Court. There are some arrangements set for today, Mr. Attorney General.

Mr. Cathcart. If the Court please, there are four arrangements set for this morning. I believe the first, if the Court please, is the Territory of Hawaii against Walter G. Smith, indictment for perjury.

Mr. Ballou. If the Court please—

The Court. Mr. Ballou, you were on last Saturday sentenced to be imprisoned by this Court as and for an open and flagrant contempt of this Court, for the period of thirty days. The Court has been unofficially informed from reading the newspapers that you were immediately paroled by the Executive of this Territory. The Court is bound to take judicial notice of its own records. Those records show that you were to be imprisoned for thirty days. This Court cannot take judicial notice of a pardon; it is a private document which concerns almost entirely the individual who receives it. If you have a pardon and produce it at the bar of this court, you will be recognized and heard here, but until that is done you will not, sir.

Mr. Ballou. I was under the impression that the Court took judicial notice of acts of the Executive.

The Court. I have examined the matter and find it to be a private document and that it must be pleaded, and the Court does not take judicial notice of it.

Mr. Hankey. If the Court please, I ask that the firm of Andrews, Peters & Andrade and Frederick W. Hankey be entered as attorneys for the defendant.

The Court. It is so ordered.

Mr. Hankey. We were called into this case only late last evening. The incidents of the last few days, which it is unnecessary to refer to, only so far as the remark this morning excluding previous counsel from the case at this time, I would suggest has placed counsel just exactly in a peculiar position, not having had opportunity to confer with our client or to ascertain upon what grounds this action was to be met primarily. I understand from what has occurred that either in the matters of motion, demurrer or plea that it must be likely that this Court would not assume to pass upon an essential right of the defendant.

The charge in its nature is a grave and serious one, and counsel should at every stage representing the defendant consider in what manner his legal defense should be presented; and counsel whose appearance is entered feel that they ought to have a little further time before deciding in what manner to meet this indictment. In view of that and that there can be no injustice done the Territory, and under the peculiar circumstances of the case, I ask that the arraignment be postponed for another day.

The Court. Has the Attorney General any objection to the order?

Mr. Cathcart. No objection, if the Court please.

The Court. What day will you have, Mr. Hankey?

Mr. Hankey. I am engaged in a case in Court, and I would suggest that after tomorrow morning.

The Court. That would be Friday morning. Is that agreeable to the Attorney General?

Mr. Cathcart. No objection, your Honor.

The Court. The Court again avails itself of this opportunity to say that it will not under any circumstances which it might avoid, try this case or any issue in the case which may be presented to this Court for determination. As clearly and unequivocally as it was possible for the Court to do so, it has heretofore announced a similar determination. It reiterates what it has before said.

The Court is informed that Judge Gear left San Francisco on the 24th of this month and that he will arrive in Honolulu within a few days. Directly upon his arrival this case will be assigned to him for consideration and with action as may be presented in the case. The matter may now stand over formally until Friday morning—10 o'clock Friday morning. The term expires by limitation Saturday, but the term will be extended for twelve days. Under the statute the Court is authorized to extend the term for twelve working-days, and that order will be made Saturday.

## DISSOLUTION OF COPARTNERSHIP.

OSCAR LEWIS, BAILIFF IN THE COURT OF JUDGE HUMPHREYS, had his case as such brought to a sudden termination yesterday afternoon. He is no longer the additional bailiff in the court to which he owed his appointment. Lewis, who gained favor in the eyes of Judge Humphreys and was appointed to the responsible and honorable position, "resigned" his office, and the "resignation" was promptly accepted by the Judge.

The "resignation" came after the summoning of the bailiff to appear before the Grand Jury, together with his pal, Frank Turk. Lewis was charged by A. W. Pearson, manager of the Advertiser, with having approached the latter with a proposition to pack the next petit jury which would try Walter G. Smith. The offer was made known to the public in Monday's Advertiser through the sworn affidavit of Manager Pearson, and was partially alluded to in Humphreys' court yesterday when "Colonel" Fitch, whose name is mentioned in the affidavit, arose in court and denied any connection with Lewis and his jury-packing proposition. Lewis was not in the court while the discussion was going on, but remained in the hallway, an eager listener.

Judge Humphreys during the day requested Lewis to resign his commission, which he did in the following note:

Honolulu, Haw. Ter., May 28, 1901.

To Hon. A. S. HUMPHREYS, Judge of the First Judicial Circuit of Ter. of Hawaii:

I, the undersigned, do hereby tender my resignation as bailiff of said above named court. Respectfully,

O. CHAS. LEWIS.

Judge Humphreys promptly wrote the following at the bottom of the note:

This resignation is accepted to take effect at once.

A. S. HUMPHREYS, First Judge.

May 28, 1901.

THE LEGISLATURE.

(From Wednesday's daily.)

Some little time ago rumor went the rounds of the House lobby that the members would not attempt to do any serious business until after the return of Representative Beckley from his visit to President McKinley. It is now evident that the rumor was correct. The Home Rulers undoubtedly are expecting great results from the handling in of the various papers and documents entrusted to the charge of their committeeman.

Yesterday the Home Ruler party came out flat-footed and announced and carried through an adjournment for three days, at which period Mr. Emmelhuth announced that Mr. Beckley would have returned.

The Republican members have for some time past showed their discontent at the half-hearted way in which the Home Rulers were doing the committee work. Members of Emmelhuth's committee have complained that that gentleman was not only recreant in calling meetings, but often than not, did not himself appear in his capacity of chairman. "Mr. Emmelhuth's time," said one Representative yesterday, "has been taken up so much in writing letters to the papers, that he has had none for committee work, and it looks as if he did not want any."

The session has achieved practically nothing; indeed the Republican members have lately taken to making only a perfunctory visit to the House of Representatives, and then going about their long-delayed business, so monotonous have the sessions been of late. With the Home Ruler members it is different; they have little or no business to attend to, and while they sit as legislators they achieve importance in the eyes of their constituents and themselves, besides having the pleasant knowledge that their crass ignorance and laziness is a constant thorn in the flesh of their fellow members of the opposite party and the taxpayers generally.

Monsarrat, in a sarcastic resolution, forced the hand of the majority yesterday morning, probably only by a few minutes, however, as the letters produced showed that the Home Rulers intended adjournment anyhow, and intended to state their reasons plainly. Monsarrat's resolution read as follows:

"Whereas, this extra session of the First Legislature of the Territory of Hawaii has been in session for sixteen days, and nothing has been accomplished;

"Whereas, for some reason, the members of this honorable body, do not seem inclined to pass the Appropriation bill at the present time; and,

"Whereas, the \$30,000 appropriated for the expenses of the extra session is about exhausted, and in order to save expense, be it

"Resolved, That this House, the Senate concurring, adjourn until the 8th day of June, 1901."

The resolution raised a storm of discussion, Mokekau asking to adjourn until the 12th, as his brain needed relief from the overwhelming exertions entailed by his conscientious course of always "wanting to know, your know."

Mokekau occupies a peculiar position

with his party; he is a flagrant example of a better and yet is invariably admitted to all the private councils of the Home Rulers.

Emmelhuth then disclosed the hidden hand by saying that there was to be a long adjournment as three days would be ample.

Emmelhuth corroborated the statement that three days was sufficient, adding that he had a letter with him from Beckley saying that the latter would be back by the 30th.

Then Dickey, who has waited many hours waiting for Emmelhuth to show up at committee meetings, got mad, and voiced the sentiments that he and the rest of the minority have been expressing for some time.

"It is plain to be seen," said Dickey, "that this House has determined not to do a stroke of work until Beckley comes back. Can't the machinery of this House move without Beckley? You people sent him away and now you find you can't get along without him. Suppose Beckley extended his tour as he spoke of doing? Suppose he went to the East of Europe? The whole Territory would not be made to suffer because Beckley happens to be away."

To save further trouble, Monsarrat withdrew his statement. The Home Rulers have been educated of late in satire and can now dimly see and derisively resent its appearance.

The letter referred to by Emmelhuth was read by the Speaker and was as follows:

Hon. J. A. Adams, Speaker House of Representatives.

Sir: Four special committee to whom was delegated the presentation of House resolution extending the greetings of Hawaii to the President on his Western tour and inviting him to further extend the same to the Islands, beg leave to report that the same has been duly presented.

Also as per wording of said resolution other matters, documents and papers given me and duly enumerated in said resolution.

Respectfully submitted,

F. W. BECKLEY, Delegate from the House.

Occidental Hotel, S. F., Cal., May 21, 1901.

Maheo, regardless of the lack of funds, asked to have all the committee reports printed, but his motion was defeated. He then asked that the Public Health Committee report be printed and also adopted.

At this Gillilan got mad. "Mr. Speaker," said he, "I am a member of that committee, and the other day Dr. Cooper asked me when the committee was coming around for investigation. This report may be signed by residents of Pahia, but as to a sensible man signing it, that is another proposition. I credit the Home Rulers with more sense than that, and thought that they would at least show common decency towards the heads of departments. When the executive officer and the sanitary officers are stricken from the salary list, what can such a report be worth? Here they have gone to work and stricken out the doctors and raised the wages of the notorious excavator tenders. I am in favor of having this report printed and published in every paper in the country. It will show up things just as they are."

Emmelhuth stated it as his opinion that the Health bill was lacking in practicality; that there was no one in authority, no executive officer; that the bill contained no safeguards for the preservation of the public health, and that money spent under such conditions on the provisions of the bill would inaugurate might as well be dumped into the sea.

Dickey then moved that the bill be returned to confer with the Board of Health upon its provisions.

The motion was lost and the House adjourned for three days or until Beckley's expected return on the 30th.

Representative Emmelhuth, who is popularly supposed to have contributed largely towards the filling up of Beckley's scrip for the journey, has received two letters from that gentleman in which the latter writes that Colonel Parker, Delegate Wilcox and himself were all successful in obtaining an interview with President McKinley. Beckley indeed having had the honor of an interview on two occasions, the 15th and the 21st insts.

Colonel Parker presented the President with the documents with which he was entrusted, but the date of his return to Hawaii was not obtained. Delegate Wilcox left for Washington on the 20th.

In Mr. Beckley's opinion, the President will remain for several weeks in California on account of the precarious state of the health of Mrs. McKinley. Beckley announces his intention of returning to the Mariposa, which is due to arrive on the 30th, having apparently given up his former idea of a trip to the Pan-American Exposition.

Jonah Kumalae was excused for a week's absence in which to complete his honeymoon at Wailua. He was the recipient of a handsome wedding present from the Lower House, the presentation being made privately.

ORIENTAL NOTES.

A run on the Eighteenth Bank of Nagsasaki has resulted in a suspension of loan advances.

An explosion occurred in a fuse factory at Shibata-cho, Kitano, Japan, in which four workmen were seriously burned.

The lower-lying portions of Tokyo have been flooded by the heavy rains.

The main line of the Sanyo railway, running between Kobe and Shimonoseki, is open for traffic and the trains have lowered the record of the Government line by two or three hours.

A human foot in a desiccated condition and supposed to be the foot of a foreign woman was discovered near the Oriental Hotel, Yokohama.

The Empress Dowager of China is reported as being extremely nervous of late and all threatening news and secret telegrams are being kept from her by the Grand Council.

Complaints are being made from Northern China of depredations committed by Indian troops.

An arsenal at Peking, tenanted by German soldiers, was the scene of an explosion in which several soldiers and one officer are reported killed.

The Anglican Mission in North China will make no claims whatever against the Chinese Government for loss of life or property.

Mrs. Hollingham, Mrs. Dronse and Miss Bourignon were presented with the Order of the Royal Red Cross (England) before a parade of the British garrison at Tien-Tsin.

The Japanese press discredits the attempts of Homer Lea, a Californian student who has spent some time in China and who is endeavoring to help the true interests of that empire by his influence with the progressives of the southern portion of the Celestial kingdom.

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